HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO. 14525 OF 2006

BETWEEN

K. Vijayakumar

.....

Petitioner

And

The Government of Andhra Pradesh
Rep. by its Secretary, Municipal Administration & Urban Development,
Hyderabad & others.

.....Respondents

::O R D E R ::

Counsel for the Petitioner : Shri P. Gangarami Reddy

Counsel for Respondent Nos. 1 and 2 : Government Pleader for Municipalities.

Counsel for Respondent Nos. 3 and 4 : None

Counsel for Respondent No.5 : Shri M. Ravindranath Reddy

Dated: 20 .07.2006

Per G.S. SINGHVI, CJ

This case is yet another piece of frivolous and vexatious petition filed in the name of public interest in dealing with which substantial time of the Court has been wasted. The prayer of the petitioner is for grant of declaration that action of respondent Nos.1 and 3 to allow respondent No.4 to establish retail outlet in ward No.16/658 and 16-11/575, Trunk Road, Nellore by relaxing the mandatory condition required under the building regulations is illegal, arbitrary and contrary to the provisions of the Municipal Corporations Act and Building Rules made there under and also to restrain the respondents from establishing retail outlet at the site in question.

In paragraph 2 of the writ petition, the petitioner has described himself as a social worker, but has not given the particulars of the social work done by him. In response to the query made by the Court, learned counsel for the petitioner stated that his client is employed in Madhav and Gopika theatres, Nellore and his duty hours are 11.00 a.m. to 11.00 p.m. If that be so, we shudder to think as to what type of social work he must have been doing up to 11.00 a.m. and after 11.00 p.m. This shows that in the guise of public interest litigation, the petitioner is espousing the cause of someone else.

In paragraph 5, the petitioner has averred as under:

> "……. It is reliably learnt that the 1st respondent has granted permission to the

respondents 4 and 5 to install the petrol pump by relaxing the conditions relating to the minimum site required and also the minimum distance from the junction point. I submit that the respondents 4 and 5 are proceeding with the construction of the building."

In paragraphs 8, 9 and 12, he has made the following averments:

"8. I submit that the residents of the locality made representations to the respondents 1 to 3 objecting for grant of license to the respondents 4 and 5 for establishment of petrol bunk in ward No. 16/658 and 16-11/575, Trunk Road, Nellore town. In spite of the objections from the residents of the locality the 3rd respondent in file Roc.No.G1/4679/05 dated 26.10.2005 has sent proposals for final approval by the Government by relaxing the conditions stipulated in the G.O.Ms.NO.905 MA dated 07.08.1981. I submit that the 3rd respondent should have rejected the application submitted by the respondent No.4 as the same has not fulfilled the minimum requirements. But the 3rd respondent for the reasons best known to him and for extraneous considerations has forwarded the application for approval by the 1st respondent. The proceedings of the 2nd respondent are illegal and vitiated by malafide.

9. I submit that licence under the Explosive Act has to be obtained for installation of the petrol out let. The licence under the Explosive Act cannot be granted to establish retail outlet in residential locality. For establishment of petroleum outlet necessary clearance has to be obtained from the pollution Control Board. The respondents 4 and 5 without obtaining necessary licences under the

provisions of Explosive Act, Air Prevention of Control of Pollution Act and Environment (Protection) Act are proceeding with the construction of petrol filling station. The respondents 4 and 5 being influential are getting all the permissions and licences by back door methods ignoring the safety of the residents of the locality.

12. I submit that the respondents 4 and 5 are proceeding to establish a retail out let and making preparations to intall the petrol pump. Hence it is prayed that the Hon'ble Court may be pleased to direct 3rd respondent not to allow the respondents 4 and 5 to proceed with the construction or operating the retail outlet of Reliance petrol at Ward No.16/658 and 16-11/575, Trunk Road, Nellore Town pending disposal of the above writ petition."

If the averments contained in paragraphs 8 and 9 are read in conjunction with what is contained in paragraph 5, it becomes clear that the petitioner has not come to the Court with clean hands. If the proposal for establishing retail outlet at the site in question is being processed by the official respondents, it is difficult to understand as to how an assertion could be made that respondent No.1 has granted permission to respondent Nos. 4 and 5 to install the petrol pump by relaxing the conditions relating to minimum site and minimum distance from the junction point. The confusion created by the vague and contradictory averments contained in the writ petition is compounded by the fact that the petitioner has deliberately refrained from placing on record the so-called permission granted by respondent No.1 in favour of respondent Nos. 4 and 5 to establish the retail outlet at the site in question.

In our considered view, a person, who seeks intervention of the Court by filing petition under Article 226 of the Constitution of India, is not only required to come with clean hands but is under an onerous duty to place all the facts in a correct perspective and produce the documents, which have direct bearing on his prayer. By withholding the most important document, namely, the permission allegedly granted by respondent No.1 to respondent Nos. 4 and 5 to install the petrol pump by relaxing the conditions regarding distance etcetera, the petitioner has made an attempt to mislead the Court. Therefore, he is not entitled to any relief in this petition filed in the name of public interest litigation.

We are further of the view that the petitioner cannot plead ignorance in the matter. He should have, before instituting this petition, filed an application under the Right to Information Act, 2005 and requested the authorities concerned to supply him information relating to establishment of petrol pump. He could have also asked for certified copy of the permission allegedly granted by respondent No.1 in favour of respondent Nos. 4 and 5 and other steps taken by the competent authorities for installation of petrol pump. The petitioner's failure to take these steps demonstrates lack of bona fides on his part.

The view taken by us finds support from the recent judgments of the Supreme Court in **Dr.B. Singh v. Union of India**[1], **Dattaraj Nathuji Thaware v. State of Maharastra**[2], **R & M Trust v. Koramangal Residents Vigilance Group**[3] and **Gurpal Singh v. State of Punjab**[4].

With the above observations, the writ petition is dismissed. For filing a frivolous petition of this nature, the petitioner is saddled

with cost of Rs.5,000/-. The amount of cost shall be deposited by the petitioner with the Andhra Pradesh Sate Legal Services Authority within one month from today. The Member Secretary, Andhra Pradesh State Legal Services Authority should inform the Court whether or not the petitioner has deposited the amount of costs so that, if considered necessary, further directions can be given for recovery of the amount of costs.

At this stage, Shri M. Ravindranath Reddy, advocate made a statement that he has instructions to appear on behalf of respondent No.5. He says that owner of Madhav and Gopika theatre had filed a civil suit for injunction in the Court of Junior Civil Judge, Nellore, but could not succeed in persuading the concerned Court to pass an order of injunction and, therefore, he has put up the employee of the theatre for filing this petition in the name of pro bono publico . We have taken cognizance of the statement made by Shri Ravindranath only in order to demonstrate the frivolous character of litigation instituted by the petitioner.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

20.07.2006
svs

[1] (2004) 3 SCC 363

[2] (2005) 1 SCC 590

[3] (2005) 3 SCC 91

[4] (2005) 5 SCC 136